

Before the
UNITED STATES COPYRIGHT ROYALTY JUDGES
THE LIBRARY OF CONGRESS
Washington, D.C.

RECEIVED

DEC 16 2014

Copyright Royalty Board

In the Matter of

DETERMINATION OF ROYALTY RATES
FOR DIGITAL PERFORMANCE IN SOUND
RECORDINGS AND EPHEMERAL
RECORDINGS (*WEB IV*)

Docket No. 14-CRB-0001-WR
(2016–2010)

**iHEARTMEDIA'S OPPOSITION TO SOUNDEXCHANGE'S MOTION TO
COMPEL iHEARTMEDIA TO PRODUCE DOCUMENTS RELATED
TO THE WITHDRAWN TESTIMONY OF BRETT DANAHER**

SoundExchange filed a motion to compel against iHeartMedia seeking three categories of documents. Two of those categories involved promotional documents that, as SoundExchange acknowledges, iHeartMedia had already agreed to produce and had begun producing at the time of SoundExchange's motion. *See* Mot. at 2, 3. Production of those documents is now complete. SoundExchange's motion with respect to that category is therefore moot, and SoundExchange has agreed to withdraw it. *See* Joint Notice of Resolution of Certain Pending Motions (Dec. 16, 2014).

The other category relates to Professor Brett Danaher. But iHeartMedia has produced all materials responsive to SoundExchange's discovery requests regarding Professor Danaher, including all of the data that Professor Danaher ever received and used in his testimony, as well as all the non-privileged communications between Professor Danaher and the company who supplied that data ("Tracker"). SoundExchange – through a request made for the first time on the day it filed its motion – now seeks additional Tracker data that Professor Danaher never received or used, based on speculation that these data may be helpful for SoundExchange to

make its own case. But iHeartMedia does not have access to additional Tracker data, and does not control Tracker. iHeartMedia could obtain these data only by purchasing them from Tracker at significant expense, which SoundExchange could do on its own.

Denial of the motion is independently warranted by the fact that Professor Danaher's testimony was withdrawn *before* Sound Exchange filed this motion – and after iHeartMedia had already given SoundExchange everything they had requested to date regarding Professor Danaher. Thus, SoundExchange's entire extant motion relates to an expert who is no longer a witness in this case. Moreover, SoundExchange's request does not even relate to Professor Danaher's withdrawn testimony, but instead seeks information that SoundExchange admits (at 5) is intended to "prove SoundExchange's contentions." Because SoundExchange's request is not directly related to any written direct statement, it must be rejected.

BACKGROUND

On October 7, 2014, iHeartMedia submitted written direct testimony from Professor Brett Danaher. Professor Danaher's testimony analyzed the effect that increased use of webcasting had on purchasing behavior, using data that were purchased from an Internet consumer panel tracking company. Danaher WDT ¶ 4. Pursuant to the contract under which these data were purchased, the name of the company was not to be made public, but instead was to be referred to as "Tracker." *Id.* ¶ 6 & n.3. Tracker provided four data files to Professor Danaher all of which were in a plain text (.txt) format. *See* IHM_EXP_0002457, IHM_EXP_0002458, IHM_EXP_0002472, and IHM_EXP_0002473. To analyze these data, Professor Danaher compiled the four raw files into a single Excel file. *See* IHM_EXP_0002456. iHeartMedia produced the compiled data as part of its initial disclosures to SoundExchange. *See* Letter from E. Leo to R. Ehler (Nov. 17, 2014) (attached hereto as Ex. A).

On October 13, 2014, SoundExchange served its First Set of Requests for Production of Documents to iHeartMedia, Inc. The first request asks for “[a]ll documents that relate to, concern, or comprise any data, analyses or other materials referred to, relied on, performed, or that form the basis for any expressed opinions in the written direct testimony of Dr. Brett Danaher, including any documents that concern or relate to the study described in paragraph 6 of the Dr. Danaher’s written direct testimony and documents sufficient to show the identity of ‘Tracker.’” SoundExchange First Set of RFPDs at 4 (RFPD No. 1) (Ex. A to Declaration of Kuruvilla J. Olasa dated Dec. 8, 2014 (“Olasa Decl.”)). iHeartMedia responded that all documents that Professor Danaher referenced or relied upon in formulating the opinions in his written direct testimony had been provided to SoundExchange as part of iHeartMedia’s initial disclosures. iHeartMedia also provided the actual name of “Tracker,” which Tracker authorized subject to the Protective Order entered in this case.

On November 17, 2014, SoundExchange noticed Professor Danaher’s deposition, which the parties subsequently agreed would occur on December 10, 2014. Two days later, SoundExchange served its Second Set of Requests for Production of Documents to iHeartMedia, Inc. Those requests sought four additional items related to Professor Danaher’s testimony: (1) “All programs or code used to process, clean, and/or implement the regression discussed in Dr. Danaher’s reports and the raw data received from Tracker”; (2) “Documents sufficient to recreate Dr. Danaher’s analysis, including all software code and spreadsheets and any raw data, as received from Tracker”; (3) “All communications between Dr. Danaher or any member of his staff and Tracker”; and (4) documents regarding Dr. Danaher’s “prior consulting work” regarding promotional effect. *See* SoundExchange Second Set of RFPDs at 5 (RFPDs Nos. 4-7) (Ex. B to Olasa Decl.). On October 10, 2014, November 17, 2014, and December 2, 2014,

iHeartMedia produced everything SoundExchange requested with respect to the first three requests, and with respect to the fourth told SoundExchange it was willing to meet and confer, an offer that SoundExchange never pursued.

On December 2, 2014, Professor Danaher filed Corrected Testimony. *See* iHeartMedia's Notice of Submission of Corrected Version of the Written Direct Testimony of Brett Danaher. At that time, SoundExchange did not voice any objections to this correction or make any additional requests for information.

On December 8, 2014, iHeartMedia withdrew Professor Danaher's testimony from this proceeding and notified SoundExchange that it would therefore not be producing Professor Danaher for a deposition. SoundExchange's counsel subsequently requested by email "(1) All data – in its raw form and including all variables [Tracker] tracks that Prof. Danaher received from, had access to through, or provided to [Tracker] (through and including today), including all observations and all variables"; and (2) "All of Prof. Danaher's communications with [Tracker] (through and including today). E-mail from K. Klaus to E. Leo (Dec. 8, 2014, 10:36AM) (attached hereto as Ex. B). Counsel for iHeartMedia responded that it had "already produced all the raw data that Prof. Danaher received and used in his testimony, as well as all non-privileged communications between Prof. Danaher and Tracker." E-mail from E. Leo to K. Klaus (Dec. 8, 2014, 10:53AM) (Ex. B).

In response, SoundExchange's counsel stated that it did not "have the data that 'Tracker' pulled at Professor Danaher's direction, *regardless of whether it provided that data to him*," and asserted that "[t]he as-yet unproduced data includes all variables that 'Tracker' tracked and the broader set of data that 'Tracker' cut based on parameters that Professor Danaher identified." E-mail from K. Klaus to E. Leo (Dec. 8, 2014, 11:12AM) (emphasis added) (Ex. B). Counsel for

iHeartMedia responded that “[n]either we nor Professor Danaher has the data you describe. Professor Danaher did not receive or rely on any data other than what we have already provided. Thus, iHeartMedia will not produce any additional Tracker data.” E-mail from E. Leo to K. Klaus (Dec. 8, 2014, 11:45AM) (Ex. B).

SoundExchange then filed the instant motion.

ARGUMENT

SoundExchange’s request for Tracker data that Professor Danaher never received or used fails on multiple grounds.¹

First, SoundExchange seeks data that it concedes Professor Danaher never received or used in his analysis, *see* Mot. at 5, and that are not in iHeartMedia’s possession, custody, or control. SoundExchange seeks “all data that Professor Danaher *had access to* through his panel-tracking service,” claiming that “Professor Danaher had access to a much broader set of data concerning many more users of non-interactive services” than the data he actually used for his testimony. *Id.* (emphasis in original). But the only data that Professor Danaher “had access to” are the data purchased from Tracker and that he actually received.² The fact that Tracker had

¹ Although SoundExchange’s motion (at 6) also seeks “all of Professor Danaher’s non-privileged communications with ‘Tracker,’” these have already been produced. When counsel for iHeartMedia informed SoundExchange of this fact, SoundExchange did not dispute it. Tellingly, SoundExchange’s motion does not discuss these documents, much less demonstrate how iHeartMedia’s production is somehow deficient.

² As SoundExchange notes, Tracker informed Professor Danaher that “Out of the 93k machines/people we quoted as having visited either Pandora or iHeartRadio across the 6 month people, we have ranked them according to the total combined duration of Pandora + iHeartRadio during that time. After that ranking we have selected the top 15k who reported the highest duration at those two sites and will trend them out over Nov’13-Apr’14.” E-mail from Quint Quillian of Tracker to Brett Danaher (Aug. 18, 2014) at IHM_EXP_0002460 (Ex. C to Olasa Decl.). Professor Danaher was never provided access to the data regarding the 78,000 machines/people beyond the 15,000 for which he received data. Moreover, as this same e-mail chain reveals, the decision to provide Professor Danaher with access to only 15,000 users was made by Tracker, not Professor Danaher, noting that this “sample” would “provide a

additional data for sale that Professor Danaher chose not to purchase hardly establishes that either he or iHeartMedia “had access to” these data. These data are owned and controlled by Tracker, which is not a participant in this proceeding, and is therefore outside the scope of permissible discovery. *See* 17 U.S.C. § 803(b)(6)(C)(v); 37 C.F.R. § 351.5(b)(1). If SoundExchange wants these data, it can seek to purchase them from Tracker, as iHeartMedia would have to do, a fact that weighs against SoundExchange’s motion. *See* 37 C.F.R. § 351.5(c)(2)(3) (in ruling on discovery motions, Judges may consider “[w]hether the participant seeking the discovery had an ample opportunity by discovery in the proceeding or by other means to obtain the information sought.”).

Second, SoundExchange fails to demonstrate that the data it seeks are related to a witness’s testimony. The rules limit discovery to “nonprivileged documents that are directly related to the written direct statement or written rebuttal statement of that participant.” 37 C.F.R. § 351.5(b)(1). Given that Professor Danaher is no longer a witness in this case, SoundExchange’s request plainly fails to meet this standard. Nor does SoundExchange even claim that the requested data relate to Professor Danaher’s withdrawn testimony. SoundExchange instead argues (at 4-5) that it seeks these data because “it is possible that Professor Danaher discovered even more ‘corrections’ to his testimony, including new conclusions that further undercut iHeartMedia’s contentions and/or actually prove SoundExchange’s contentions and/or actually prove SoundExchange’s contentions.” Thus, SoundExchange is not seeking these data because they are directly related to Professor Danaher’s testimony, but instead because it hopes these data will help bolster other aspects of its

comprehensive view over the period,” and that “there was such a high density of low duration users that we thought it made sense to go with the highest duration users across the 6 month period.” *See id.* at IHM_EXP_0002462 In other words, according to Tracker, usage for the other 78,000 machines/people was so low that these data were unlikely to be meaningful.

own case.³ This is not a valid basis for discovery against a participant, much less a non-participant like Tracker.

Finally, SoundExchange's motion should be denied because it seeks to compel iHeartMedia to produce documents not sought in its timely served document requests, but instead in emails sent the day it filed its motion. SoundExchange did not seek "all data that Professor Danaher had access to" in either its first or second request for documents. SoundExchange half-heartedly asserts (at 5) that "[t]he requested information is responsive to SoundExchange's document requests, including Request No. 1 in SoundExchange's First Set of Requests for Production, and Request Nos. 4-6 in SoundExchange's Second Set of Requests of Production." But SoundExchange makes no attempt to show how these prior requests cover the data that it is now seeking. Nor could it. Request No. 1 is limited to material that Professor Danaher "referred to, relied on, performed, or that form the basis for any expressed opinions"; Request No. 4 asks for "programs or code used to process, clean, and/or implement the regression discussed in Dr. Danaher's report"; Request No. 5 seeks "[d]ocuments sufficient to recreate Dr. Danaher's analysis"; and Request No. 6 seeks "communications between Dr. Danaher . . . and Tracker." Thus, none of the data that SoundExchange now seeks was covered by one of its previous discovery requests. Instead, SoundExchange requested the data for the first time on the day it filed this motion. The Judges should reject SoundExchange's effort to supplement its discovery requests outside of the schedule approved for this proceeding.

³ SoundExchange also claims (at 4) that it "was very interested in taking Professor Danaher's deposition, in order to inquire about the dramatic change in his testimony and to determine if Professor Danaher's research yielded further conclusions that undermine the case of iHeartMedia and the other Services." In fact, SoundExchange noticed the deposition of Professor Danaher more than two weeks *before* Professor Danaher submitted his Corrected Testimony.

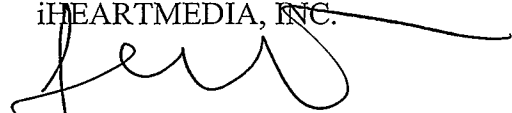
CONCLUSION

For the foregoing reasons, the Judges should deny SoundExchange's Motion To Compel iHeartMedia To Produce Documents In Response to SoundExchange's Document Requests.

Dated: December 16, 2014

Respectfully submitted,

iHEARTMEDIA, INC.



John Thorne

Evan T. Leo

KENLOGG, HUBER, HANSEN, TODD,

EVANS & FIGEL, P.L.L.C.

1615 M Street, NW, Suite 400

Washington, DC 20036

jthorne@khhte.com

eleo@khhte.com

Tel: 202-326-7900

Fax: 202-326-7999

Counsel for iHeartMedia, Inc.

CERTIFICATE OF SERVICE

I, Evan T. Leo, hereby certify that a copy of the foregoing Opposition to SoundExchange's Motion To Compel iHeartMedia to Produce Documents Related to the Withdrawn Testimony of Brett Danaher has been served on this 16th day of December 2014 on the following persons:

<p>Kurt Hanson AccuRadio, LLC 65 E. Wacker Place, Suite 930 Chicago, IL 60601 kurt@accuradio.com</p> <p><i>AccuRadio, LLC</i></p>	<p>Jeffrey J. Jarmuth Law Offices of Jeffrey J. Jarmuth 34 E. Elm Street Chicago, IL 60611-1016 jeff.jarmuth@jarmuthlawoffices.com</p> <p><i>Counsel for AccuRadio, LLC</i></p>
<p>Catherine R. Gellis CGCounsel P.O. Box 2477 Sausalito, CA 94966 cathy@cgcounsel.com</p> <p><i>College Broadcasters, Inc.</i></p>	<p>David D. Golden Constantine Cannon LLP 1001 Pennsylvania Avenue NW, Suite 1300N Washington, DC 20004 dgolden@constantinecannon.com</p> <p><i>Counsel for College Broadcasters, Inc.</i></p>
<p>David Oxenford Wilkinson Barker Knauer, LLP 2300 N Street, NW, Suite 700 Washington, DC 20037 doxenford@wbklaw.com</p> <p><i>Counsel for Educational Media Foundation and National Association of Broadcasters</i></p>	<p>Kevin Blair Brian Gantman Educational Media Foundation 5700 West Oaks Boulevard Rocklin, CA 95765 kblair@kloveair1.com bgantman@kloveair1.com</p> <p><i>Educational Media Foundation</i></p>
<p>William Malone 40 Cobbler's Green 205 Main Street New Canaan, CT 06840-5636 malone@ieee.org</p> <p><i>Harvard Radio Broadcasting Co., Inc. and Intercollegiate Broadcasting System, Inc.</i></p>	<p>George D. Johnson GEO Music Group 23 Music Square East, Suite 204 Nashville, TN 37203 george@georgejohnson.com</p> <p><i>GEO Music Group</i></p>

<p>Frederick J. Kass Intercollegiate Broadcasting System, Inc. 367 Windsor Highway New Windsor, NY 12553-7900 ibs@ibsradio.org ibshq@aol.com</p> <p><i>Intercollegiate Broadcasting System, Inc.</i></p>	<p>Jane Mago, Esq. Suzanne Head National Association of Broadcasters 1771 N Street, NW Washington, DC 20036 jmago@nab.org shead@nab.org</p> <p><i>National Association of Broadcasters</i></p>
<p>Bruce G. Joseph Karyn K. Ablin Michael L. Sturm Wiley Rein LLP 1776 K Street, NW Washington, DC 20006 bjoseph@wileyrein.com kablin@wileyrein.com msturm@wileyrein.com</p> <p><i>Counsel for National Association of Broadcasters</i></p>	<p>Gregory A. Lewis National Public Radio, Inc. 1111 North Capitol Street, NE Washington, DC 20002 glewis@npr.org</p> <p><i>National Public Radio, Inc.</i></p>
<p>Kenneth L. Steintal Joseph R. Wetzel King & Spalding LLP 101 Second Street, Suite 2300 San Francisco, CA 94105 ksteinthal@kslaw.com jwetzel@kslaw.com</p> <p><i>Counsel for National Public Radio, Inc.</i></p>	<p>Ethan Davis King & Spalding LLP 1700 Pennsylvania Avenue, NW Suite 200 Washington, DC 20006 edavis@kslaw.com</p> <p><i>Counsel for National Public Radio, Inc.</i></p>
<p>Antonio E. Lewis King & Spalding, LLP 100 N. Tyron Street Suite 3900 Charlotte, NC 28202 alewis@kslaw.com</p> <p><i>Counsel for National Public Radio, Inc.</i></p>	<p>Russ Hauth, Executive Director Harv Hendrickson, Chairman National Religious Broadcasters Noncommercial Music License Committee 3003 Snelling Avenue North Saint Paul, MN 55113 russh@salem.cc hphendrickson@unwsp.edu</p> <p><i>National Religious Broadcasters Noncommercial Music License Committee</i></p>

<p>Karyn K. Ablin Jennifer L. Elgin Wiley Rein LLP 1776 K St. NW Washington, DC 20006 kablin@wileyrein.com jelgin@wileyrein.com</p> <p><i>Counsel for National Religious Broadcasters Noncommercial Music License Committee</i></p>	<p>Christopher Harrison Pandora Media, Inc. 2101 Webster Street, Suite 1650 Oakland, CA 94612 charrison@pandora.com</p> <p><i>Pandora Media, Inc.</i></p>
<p>R. Bruce Rich Todd D. Larson Sabrina A. Perelman Benjamin E. Marks Weil, Gotshal & Manges LLP 767 Fifth Avenue New York, NY 10153 r.bruce.rich@weil.com todd.larson@weil.com sabrina.perelman@weil.com Benjamin.marks@weil.com</p> <p><i>Counsel for Pandora Media, Inc.</i></p>	<p>Gary R. Greenstein Wilson Sonsini Goodrich & Rosati 1700 K Street, NW, 5th Floor Washington, DC 20006 ggreenstein@wsgr.com</p> <p><i>Counsel for Pandora Media, Inc.</i></p>
<p>Jacob B. Ebin Akin Gump Strauss Hauer & Feld LLP One Bryant Park Bank of America Tower New York, NY 10036-6745 jebin@akingump.com</p> <p><i>Counsel for Pandora Media, Inc.</i></p>	<p>Cynthia Greer Sirius XM Radio Inc. 1500 Eckington Pl. NE Washington, DC 20002 cynthia.greer@siriusxm.com</p> <p><i>Sirius XM Radio Inc.</i></p>
<p>Patrick Donnelly Sirius XM Radio Inc. 1221 Avenue of the Americas 36th Floor New York, NY 10020 patrick.donnelly@siriusxm.com</p> <p><i>Sirius XM Radio Inc.</i></p>	<p>Martin F. Cunniff Jackson D. Toof Arent Fox LLP 1717 K Street, NW Washington, DC 20006 martin.cunniff@arentfox.com jackson.toof@arentfox.com</p> <p><i>Counsel for Sirius XM Radio Inc.</i></p>

<p>Paul Fakler Arent Fox LLP 1675 Broadway New York, NY 10019 paul.fakler@arentfox.com</p> <p><i>Counsel for Sirius XM Radio Inc.</i></p>	<p>Glenn D. Pomerantz Kelly M. Klaus Anjan Choudhury Melinda E. LeMoine Kuruvilla J. Olasa Jonathan Blavin Rose Leda Ehler Jennifer L. Bryant Munger, Tolles & Olson LLP 355 S. Grand Avenue, 35th Floor Los Angeles, CA 90071-1560 Glenn.Pomerantz@mto.com Kelly.Klaus@mto.com Anjan.Choudhury@mto.com Melinda.LeMoine@mto.com Kuruvill.Olasa@mto.com Jonathan.Blavin@mto.com Rose.Ehler@mto.com Jennifer.Bryant@mto.com</p> <p><i>Counsel for SoundExchange, Inc.</i></p>
<p>C. Colin Rushing Bradley E. Prendergast SoundExchange, Inc. 733 10th Street, NW, 10th Floor Washington, DC 20001 crushing@soundexchange.com bprendergast@soundexchange.com</p> <p><i>SoundExchange, Inc.</i></p>	

/s/ Evan T. Leo
Evan T. Leo
KELLOGG, HUBER, HANSEN, TODD,
EVANS & FIGEL, P.L.L.C.
1615 M Street, NW, Suite 400.
Washington, DC 20036
Telephone: (202) 326-7900
Facsimile: (202) 326-7999
eleo@khhte.com

Counsel for iHeartMedia, Inc.






Exhibit A

KELLOGG, HUBER, HANSEN, TODD, EVANS & FIGEL, P.L.L.C.

SUMNER SQUARE
1615 M STREET, N.W.
SUITE 400
WASHINGTON, D.C. 20036-3215

(202) 326-7900

FACSIMILE:
(202) 326-7999

November 17, 2014

Via Electronic Mail

Rose Leda Ehler
Munger, Tolles & Olson LLP
366 South Grand Avenue
Los Angeles, California 90071
Telephone: (415) 512-4071
rose.ehler@mtm.com

Re: iHeartMedia's Initial Disclosures Regarding Testimony of Brett Danaher
Docket No. 14-CRB-0001-WR (2016-2020) (*Web IV*)

Dear Rose:

I am writing in response to your November 13, 2014 letter to Mark Hansen regarding the testimony of Brett Danaher. Per your request, we are producing the following documents Bates numbered IHM_EXP_0002455 – IHM_EXP_0002456:

1. The complete set of data that Dr. Danaher received from Tracker, and
2. The Stata code that Dr. Danaher used to analyze the Tracker data.

These materials are designated as Restricted pursuant to the Protective Order entered October 10, 2014, and are accompanied by the enclosed Declaration and Certification of Evan Leo pursuant to 37 C.F.R. § 350.4(e)(1).

Sincerely,

/s/ Evan T. Leo

Evan T. Leo

Enclosures

Exhibit B

From: [Klaus, Kelly](#)
To: [Leo, Evan T.](#)
Cc: [Choudhury, Anjan](#); [Ehler, Rose](#); [Pomerantz, Glenn](#); [Thorne, John](#); [Hansen, Mark C.](#)
Subject: Re: Danaher
Date: Monday, December 08, 2014 5:52:54 PM
Attachments: [image001.png](#)

Thanks.

Sent from my iPad

On Dec 8, 2014, at 2:48 PM, "Leo, Evan T." <eleo@khhte.com> wrote:

Hey Kelly,

Yes, we notified the other services earlier today. And, yes, of course, you get back the notice and still have 9 left.

Thanks,
Evan

From: Klaus, Kelly [<mailto:Kelly.Klaus@mtto.com>]
Sent: Monday, December 08, 2014 5:20 PM
To: Leo, Evan T.; Choudhury, Anjan; Ehler, Rose; Pomerantz, Glenn
Cc: Thorne, John; Hansen, Mark C.
Subject: RE: Danaher

Hi Evan – None of the other Services had notified us that they would be attending Prof. Danaher's deposition. Have you let them know/will you let them know that you are pulling Prof. Danaher's testimony and that the deposition will not go forward? Also, I assume there is agreement on the Services' side that we get back the depo notice that we had issued for Prof. Danaher, so we have 9 of 10 left. Let me know if there is an issue with that. Best, Kelly

From: Leo, Evan T. [<mailto:eleo@khhte.com>]
Sent: Monday, December 08, 2014 11:45 AM
To: Klaus, Kelly; Choudhury, Anjan; Ehler, Rose; Pomerantz, Glenn
Cc: Thorne, John; Hansen, Mark C.
Subject: RE: Danaher

Kelly,

Neither we nor Professor Danaher has the data you describe. Professor Danaher did not receive or rely on any data other than what we have already provided. Thus, iHeartMedia will not produce any additional Tracker data.

Thanks,
Evan

From: Klaus, Kelly [<mailto:Kelly.Klaus@mtto.com>]
Sent: Monday, December 08, 2014 2:12 PM
To: Leo, Evan T.; Choudhury, Anjan; Ehler, Rose; Pomerantz, Glenn
Cc: Thorne, John; Hansen, Mark C.
Subject: RE: Danaher

Evan,

Thanks, but we do not have the data that "Tracker" pulled at Prof. Danaher's direction, regardless of whether it provided that data to him. The as-yet unproduced data includes all other variables that "Tracker" tracked and the broader set of data that "Tracker" cut based on parameters that Prof. Danaher identified. By way of example, "Tracker" had 93,000 machines/people who visited Pandora / iHeart:

<image001.png>

IHM_EXP_0002459, at p. 2. We would like the complete data set for these "machines/people." Please let us know if iHeart will produce this data.

Thanks, and best regards,
Kelly

From: Leo, Evan T. [<mailto:eleo@khhte.com>]
Sent: Monday, December 08, 2014 10:53 AM
To: Klaus, Kelly; Choudhury, Anjan; Ehler, Rose; Pomerantz, Glenn
Cc: Thorne, John; Hansen, Mark C.
Subject: RE: Danaher

Kelly,

We have already produced all the raw data that Prof. Danaher received and used in his testimony, as well as all non-privileged communications between Prof. Danaher and Tracker (whose identity should be treated as confidential and restricted).

Thanks,
Evan

From: Klaus, Kelly [<mailto:Kelly.Klaus@mtto.com>]
Sent: Monday, December 08, 2014 1:36 PM
To: Leo, Evan T.; Choudhury, Anjan; Ehler, Rose; Pomerantz, Glenn
Cc: Thorne, John; Hansen, Mark C.
Subject: RE: Danaher

Hi Evan:

Thanks for your message. We understand that iHeart will not produce Prof. Danaher

for deposition this Wednesday. We therefore will cancel our travel plans and the court reporter. However, we are concerned with the turn of events here, and we will reserve our rights with respect to Prof. Danaher's testimony, including the possibility of deposing him during the rebuttal phase. In addition, we request that iHeart produce to us this week all of the following material, to the extent not already produced:

1. All data—in its raw form and including all variables comScore tracks—that Prof. Danaher received from, had access to through, or provided to comScore (through and including today), including all observations and all variables.
2. All of Prof. Danaher's communications with comScore (through and including today).

Given the timing of iHeart's notification, we are significantly hamstrung in our ability to move to compel the foregoing material. Accordingly, unless you confirm in writing that iHeart already has produced all of the foregoing material, we will file a short motion to compel these items today in order to protect our rights. Please consider this email a request to meet-and-confer immediately on the subject or to conduct the meet-and-confer through our exchange of emails.

Best regards,
Kelly

Kelly M. Klaus | Munger, Tolles & Olson LLP

560 Mission Street | San Francisco, CA 94105

Tel: 415.512.4017 | Fax: 415-644-6917

Kelly.Klaus@mto.com | www.mto.com

NOTICE

This message is confidential and may contain information that is privileged, attorney work product or otherwise exempt from disclosure under applicable law. It is not intended for transmission to, or receipt by, any unauthorized person. If you have received this message in error, do not read it. Please delete it without copying it, and notify the sender by reply e-mail so that our address record can be corrected. To the extent that this message or any attachment concerns tax matters, it is not intended to be used and cannot be used by a taxpayer for the purpose of avoiding penalties that may be imposed by law. Thank you.

From: Leo, Evan T. [<mailto:eleo@khhte.com>]

Sent: Monday, December 08, 2014 8:15 AM

To: Klaus, Kelly; Choudhury, Anjan; Ehler, Rose; Pomerantz, Glenn

Cc: Thorne, John; Hansen, Mark C.

Subject: Danaher

Kelly and Anjan,

I left you a voice mail earlier today as I wanted to let you know that we will be withdrawing today Professor Danaher's Corrected Testimony, and therefore will not be proceeding ahead with his deposition.

Thanks,
Evan

Evan T. Leo
Kellogg, Huber, Hansen, Todd, Evans & Figel, P.L.L.C.
1615 M Street, N.W.
Suite 400
Washington, DC 20036
Tel: (202) 326-7930 | Fax: (202) 326-7999

NOTICE: This transmission is intended only for the use of the addressee and may contain information that is privileged, confidential and exempt from disclosure under applicable law. If you are not the intended recipient, or the employee or agent responsible for delivering the message to the intended recipient, you are hereby notified that any dissemination, distribution or copying of this communication is strictly prohibited. If you have received this communication in error, please notify the sender immediately via reply e-mail, and then destroy all instances of this communication. Thank you.